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Senate

INTERNET TAX NONDISCRIMINATION ACT— MOTION TO PROCEED

Mr. CARPER. I would say, Madam President, Senator Voinovich is not a Johnny-come-lately on this subject. I recall, early in my time as Governor, working through the National Governors Association, the kind of leadership he provided, encouraging the Congress, the House and Senate, and then President Clinton, to pass and enact an unfunded mandates law. He played a major role in getting that done.

It is kind of ironic that a decade or so later, we are back again and the issue is very much the same. I am pleased to see we stand today where we stood then. I am honored to be involved in this battle on the same side with Senator Voinovich and Senator Alexander.

We have been joined on the floor by the former mayor of San Francisco, Senator Feinstein, and I see we have been joined on the floor by another former Governor, Governor Allen, who in this instance is our adversary but remains our very good friend.

That having been said, I do have some other comments I would like to make. Let me observe we have gotten into some very bad habits here in Washington. We all know we are living beyond our means. We all

know about our growing budget shortfall and our escalating level of indebtedness. We all know the most popular way to pay for things around here is simply to issue more and more debt on our Nation's credit card and on our taxpayers' dime.

Moreover, we all know that our budget shortfall is actually bigger than we report it to be. We all know we are using Social Security funds to mask the actual size of our Federal budget deficit.

We are using the payroll tax contributions that working Americans pay into Social Security, and employers pay, to pay for other Government spending and to partially offset corporate tax breaks and reductions in taxes on inherited estates.

What we do not talk about very often is that piling up more debt and drawing on Social Security are not the only means we are resorting to these days to continue to spend more than we take in. The other way we found to spend without constraint or accountability was to pass the buck to our friends in State and local government.

If you think about it, it is a sweetheart deal. We order up a feast here in Washington of more spending or more

special interest tax breaks and more corporate subsidies. Then we stick the Governors, mayors, and State and local taxpayers with the tab. It is not surprising that we do this. In doing so, we get to take credit for helping an array of different groups and businesses represented here in Washington. Yet we don't have to raise a single tax or cut a single program to pay for it.

In government as in business, however, there is no such thing as a free lunch. This policy of passing unfunded mandates has not been nearly as convenient for our Governors, for our mayors, and State and local taxpayers as it has been for us here in our Nation's Capital. I don't have to tell my colleagues their States and localities are struggling to cope today with the worst fiscal crisis—some say since World War II. Classrooms are becoming even more crowded as school budgets are cut. Prisoners in a number of States are being released from jail as corrections budgets are cut. Governors and mayors are pushing through unpopular and frequently regressive tax increases because they have a constitutional mandate to balance their budget.

We all know this. Yet when it comes right down to it, we proceed to act here in Washington as if we are oblivious to what is going on all around us. We continue to treat State and local budgets almost as piggy banks that we can break in order to pay for our own priorities.

Just about everyone in this body supports a moratorium on State and local taxes on Internet access. In 1998, the Congress passed such a moratorium. In 2001, we extended that moratorium. In fact, I believe we did so just about unanimously.

Last year the Internet tax moratorium expired. There was no reason why that should have happened. If the bill had been brought to the floor of the Senate simply to extend that moratorium once again, it would have passed once again by acclamation. The American people support the moratorium. I support the moratorium. All of us want to see it extended.

However, as was the case last year, the bill we are debating this week does not simply extend the expired Internet tax moratorium. I wish that it did. Instead, what this bill does is to take advantage of the need to extend that moratorium to attach billions of dollars in new subsidies for the telecommunications industry.

Such a bill would not normally stand much of a chance of passage in the Senate.

The simple truth of the matter is we don't have the money at this time of budget deficits at home and war abroad to pay for billions of dollars in new subsidies for what is already a highly profitable industry. But the proponents of this legislation have discovered an easy solution to their problem. Why pay when we can send the bill back home to our Governors and to our mayors? Just think of it as political welfare. We spend and they pay.

Passing the buck in this way is bad enough, but it gets worse. Believe it or not, we can't actually say what this legislation will cost our friends in State and local governments. We know it will not cost us a dime here in Washington, but the truth is we do not know how much it will cost in Dover, DE, in Raleigh, NC, in Richmond, VA, in Columbus, OH, in Nashville, TN, or in Sacramento, CA.

The Congressional Budget Office tells us this legislation is written in a way that is extremely broad and vague. In fact, the Congressional Budget Office cannot even give us a rough estimate of what the effect will be on State and local budgets except to say this:

We believe it could grow to be large.

Here is what we are saying in effect to our Governors and to our mayors: We are extending to you the great honor of picking up our dinner tab tonight. We can't tell you exactly how much we have ordered or what the final bill will be, but we believe it could grow to be large.

At times like these when property taxes are being raised, when sales taxes are being raised, when school budgets are being cut, when prisoners are being released prematurely, our first responsibility in dealing with our partners in State and local government should be to do as Senator Voinovich has already said—no harm. Indeed, that is the pledge our Senate majority leader, Senator Frist, made to our Nation's Governors when he spoke to them back in February, a couple of months ago, when they were here in town. As a doctor—and a good one—the majority leader said his approach to legislation would be, "First, do no harm." This, it seems to me, at least is a sensible approach. My hope is that rather than wasting time with an unproductive fight here on the floor, we will return to the negotiating table and work out a compromise that keeps faith with this Hippocratic pledge to do no harm.

Unfortunately, the way it stands, we are choosing the way of lawyers around here rather than the way of the doctors. The Congressional Budget Office says the language of the legislation we are

proceeding to here in the Senate is so confusing lawyers will ultimately have to get involved and we will not know what the implications for State and local budgets will be until it all gets sorted out in the courts.

If we had to choose between extending the Internet tax moratorium and keeping faith with our pledge to do no harm, we would truly be faced with a difficult decision. But in reality, that is not the decision with which we are faced. We can extend the Internet tax moratorium. Nobody I have talked to is opposed to that. States and localities have been living under the Internet tax moratorium for more than 5 years now. None of them are counting on revenues from taxes prohibited under the Internet tax moratorium.

Extending the Internet tax moratorium is not what creates a large, new, unfunded mandate. What creates a large, new, unfunded mandate is using the occasion of the Internet tax moratorium renewal to create new industry subsidies and then emptying State and local treasuries to pay for those subsidies.

This bill departs from the original intent of the previous moratorium which was to ensure the monthly bills our constituents receive from their Internet service providers remain tax free. Instead, this legislation picks the pockets of State and local taxpayers who have already suffered their fair share of tax increases over the past 3 years.

Senator Alexander and I are Senators. Like all of our colleagues, we have constituents who use the Internet and who want the Internet tax moratorium to remain in place. Like most others in this body, we want to extend the Internet tax moratorium. But Senator Alexander and I are also former

Governors. We know what it is like to be on the receiving end of unfunded Federal mandates, as do my colleagues Senator Feinstein, former mayor of San Francisco, and Senator Hutchison, a former State treasurer from Texas.

Senator Alexander and I, together with Senator Voinovich, Senator Graham, Senator Hutchison, Senator Feinstein and others, have offered what we believe is a straightforward, commonsense alternative. As we did in 2001, let us examine the Internet tax moratorium for another 2 years. If we need to expand the moratorium slightly to ensure all consumers can access the Internet tax free, regardless of whether they choose cable or DSL, then let us do that. But beyond that, let us do no harm.

Let us do no harm because doing harm is not necessary to ensure consumers can access the Internet tax free. Doing harm is only necessary if we believe the telecommunications industry needs billions of dollars in new subsidies. Beyond that, doing harm is only necessary if we believe Congress cannot or should not pay for such subsidies it decides to create.

Senator Alexander and I, together with Senators VOINOVICH, FEINSTEIN, HUTCHISON, GRAHAM and others, have been working in good faith with our colleagues on the other side of this issue. We are committed to reaching a reasonable compromise. We are willing to meet every day if necessary to work out such a compromise. However, what we are not going to do is turn our backs on our former colleagues in our Nation's State houses and our Nation's city halls. We are not going to stand by as yet another unfunded mandate gets passed down and wreaks havoc on the operations of State and local governments.

We don't think it is constructive to try to write this bill on the floor. Furthermore, we believe we should only proceed to consideration of a bill that adheres to the principles of doing no harm.

If our colleagues want to attach industry subsidies to an Internet tax moratorium, they should offer an amendment to do so, and that amendment should be debated openly here on the floor of the Senate.

If the majority leader wants to try to write this bill on the floor despite our reservations, then we are prepared to go through that exercise.

We have many specific concerns with the bill that has been called up. We have a number of amendments we will offer for our colleagues' consideration, including amendments to return to the original intent of the moratorium and to require any new subsidies be directly passed on to consumers in the form of reduced rates.

We will also offer our colleagues an opportunity to pay for the billions of dollars of subsidies that have been added to this bill.

If this body does not believe the resources exist at the Federal level to pay for these subsidies, we will raise a point of order against the bill.

As the Congressional Budget Office has already indicated, this bill violates the promise Congress made in 1995 that we would not continue to pass large, unfunded mandates. The Senate has the power to waive the point of order that is supposed to prevent Congress from passing large, unfunded Federal mandates. If we are going to do so, however, Senator Alexander and I believe the Senate ought to be put on record as acknowledging our continued reliance on

unfunded mandates as a chosen means to avoid our fiscal responsibility, and it should not have to come to that. Our hope is it will not come to that.

We believe the negotiations we have had with our friends on the other side, though they have been limited, have been productive, and we have tried as fully as we can consistent with our principles to address industries' demands.

We believe we have come a long way since this debate began early last year. We are committed to continuing that process. If that process is short circuited, however, as it seems it will be, at least for now, we will insist upon a serious and informed debate in the Senate this week.

This is the body that our Founding Fathers created to represent the interest of States. This is the body that must defend our Federal system of government and stand against the trend of passing more and more unfunded Federal mandates.

Win or lose, Senator Alexander and I are committed to ensuring that this is one unfunded mandate that will not be passed silently in the dead of night.

I yield the floor.